

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of** )  
 )  
**Amendment of the Commission's Rules** )  
**Regarding Multiple Address Systems** )

**DOCKET FILE COPY ORIGINAL**

**WT Docket No. 97-81**

**RECEIVED**

**JUL 29 1999**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**To: The Commission**

**Statement of Adaptive Broadband Corporation in Support of the  
Emergency Request for Limited Exception to Application Freeze**

Adaptive Broadband Corporation (formerly Microwave Data Systems, Inc.) hereby submits this Statement in Support of the Emergency Request for Limited Exception to Application Freeze ("Emergency Request"), filed on July 23, 1999, by the United Telecom Council, the American Petroleum Institute and the Association of American Railroads (jointly referred to as CII Petitioners), requesting an exception to the freeze for utility, petroleum and railroad applications in the 928/952/956 MHz bands.

On July 1, 1999, the Federal Communications Commission released a Further Notice of Proposed Rule Making and Order ("FNPRM & Order") in the above-referenced proceeding, extending its previously adopted licensing freeze for Multiple Address Systems ("MAS") to the 928/952/956 MHz bands. This freeze serves no valid purpose and will adversely affect public safety, worker safety, and the environment.

No. of Copies rec'd 0+10  
List A B C D E

Grant of the Emergency Request is vital to critical infrastructure industry ("CII") applicants, if they are to be able to continue to meet their obligations with respect to public safety, worker safety and the environment. CII Petitioners utilize MAS systems to remotely monitor and control electrical distribution networks, oil and gas pipeline systems and switching and signaling functions throughout the nationwide railroad network. These control systems are extremely important to public safety, worker safety and the environment, and support essential infrastructure services that benefit the U.S. economy as a whole.

Adaptive Broadband is a leading manufacturer of MAS systems, which are used for the so-called "SCADA" (supervisory control and data automation) radio systems that control and monitor these infrastructure networks. Its products are used in oil and gas pipeline operations, electric distribution systems, water/wastewater control, traffic signal control and utility/industrial process control environments. These radio systems are capable of diagnostic reporting, remote monitoring and device control, allowing the user to remotely monitor and adjust critical network parameters.

In oil and gas distribution pipelines, for example, automated control is essential. If a valve malfunctions in a distribution pipeline, corrective measures must be taken within a matter of seconds or a pipeline rupture could occur, bringing with it the potential for fire or extensive environmental damage.

Based on its sales records, Adaptive Broadband estimates that 90% of all newly licensed MAS systems that have actually been constructed are licensed to private users who do not offer subscriber-based service. The vast majority of equipment orders are from private, critical infrastructure companies to meet SCADA requirements for their power, petroleum or rail networks and the like. As a leading vendor to CII entities, Adaptive Broadband has a unique perspective on the high demand for this type of equipment and has been a consistent participant in related rule making proceedings in an effort to share its perspective on these industries with the Commission.

In February, 1997, when it appeared that there was an unannounced freeze on application processing of applications for MAS licenses in the 928/952 MHz band, we met with the Commissioners' staff advisors to inform them of these industries' critical need for the continuation of MAS license processing. Later that month, the Commission announced (Report WT-97-8, released February 20, 1997) that the processing of MAS applications in the 928/952/956 MHz bands would continue while the Commission considered the licensing approach for the 932/941 MHz bands in WT Docket 97-81.

Adaptive Broadband filed comments in WT Docket 97-81 on April 21, 1997. Once again, Adaptive Broadband reiterated its view that MAS systems were not used to offer subscriber-based services, but were in fact used predominantly by critical infrastructure industries to meet urgent SCADA requirements. Adaptive Broadband filed Reply Comments on May 15, 1997, reemphasizing its views.

Adaptive Broadband was quick to spot the implications of the Balanced Budget Act of 1997 on MAS licensing. On December 5, 1997, the President of the Company met with the staff of the Wireless Telecommunications Bureau to discuss the prospects for licensing of new systems without the use of lotteries or auctions. On February 2, 1998, Adaptive Broadband filed a Petition for Commencement of Licensing in the 932/941 MHz band. (This petition is referenced at footnote 58 of the FNPRM & Order.)

In October, 1998, Adaptive Broadband again met with the Commissioners' staff advisors to emphasize the need for continued MAS licensing and immediate licensing in the 932/941 MHz band, which had been allocated for such use in 1982.

The extension of the licensing freeze to the 928/952/956 MHz bands is shocking and borders on being irresponsible and reckless. As justification for the extension of the application freeze, the FNPRM & Order simply references "uncertainty regarding whether to employ geographic area licensing and auctions for these bands." But there is no more uncertainty now about these issues than when they were first raised in 1997. If anything, by tentatively concluding in Paragraph 21 of the FNPRM & Order that site-by-site licensing should be maintained in this band, there is less uncertainty than there was before. The reason offered by the Commission for extending the freeze is hardly adequate to explain a 180 degree reversal in position on the question of continued licensing in the 928/952/956 MHz MAS bands. A freeze can be useful to preserve an unused band; but these bands are already heavily licensed. Under these circumstances, the freeze makes no sense.

It has been 17 years since badly-needed new spectrum for MAS applications was first proposed!<sup>1</sup> During this time, the continued unavailability of this new spectrum has been maddening; but at least some applicants have been able to meet their licensing requirements in the old 928/952/956 MHz bands. Now, as if to further aggravate the critical infrastructure industry, the Commission has taken away even this tiny avenue of relief. Given the enormous importance of SCADA systems, the potentially serious consequences of infrastructure failure when SCADA systems cannot be implemented, and the unpersuasive reason for the Commission's reversal of its position on continued licensing in these bands, the Commission's decision to freeze the processing of all MAS applications is unconscionable and unsustainable.

The Balanced Budget Act of 1997 was enacted in August, 1997. It expanded the category of public safety users to include critical infrastructure entities and exempted them from having to bid at auction for their licenses. Adaptive Broadband discussed the Act with the Wireless Bureau in December, 1997, in the hope of avoiding further delay in the licensing of the new MAS spectrum for these entities. However, instead of immediately implementing the wishes of Congress to streamline the licensing process for public safety entities, the Commission has taken two years only to inaugurate still more rule making, thereby adding at least another year to a project which has already consumed 17 years. Moreover, in a stunning display of insensitivity to the underlying rationale of the Act to ease the regulatory

---

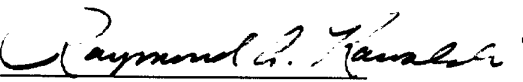
<sup>1</sup>See, Notice of Proposed Rule Making in General Docket No. 82-243, 47 Fed. Reg. 23491, May 28, 1982.

environment for critical infrastructure industries, the Commission has now shut off the only meager relief that has carried these industries through this dreadful period. This is a shameful saga in the history of an agency that otherwise can pride itself on responsiveness to the needs of the public.

It is not too late to do the right thing. Adaptive Broadband strongly urges the Commission to grant the Emergency Petition, lift the freeze and immediately reinstate acceptance and processing of MAS applications in the 928/952/956 MHz bands filed by utilities, energy companies and railroads.

Respectfully submitted,

ADAPTIVE BROADBAND CORPORATION

By   
Raymond A. Kowalski  
Keller and Heckman LLP  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C.  
(202) 434-4100

Its Attorneys

Dated: July 29, 1999

**CERTIFICATE OF SERVICE**

I, Brenna Newman, a legal secretary at the law firm of Keller and Heckman LLP, hereby certify that on this 29<sup>th</sup> day of July, 1999, copies of the foregoing "Statement of Adaptive Broadband Corporation in Support of the Emergency Request for Limited Exception to Application Freeze" were served via hand delivery or first class postage prepaid mail to the following:

United Telecom Council (UTC)  
Jeffrey L. Sheldon  
Thomas Goode  
1140 Connecticut Avenue, N.W.  
Suite 1140  
Washington, D.C. 20036

Thomas Sugrue  
Chief, Wireless Telecommunication  
Bureau  
445 Twelfth Street, S.W. TW-A325  
Washington, D.C. 20554

Association of American Railroads  
Thomas J. Keller  
Verner, Liipert, Bernhard, McPherson and Hand, Chtd.  
901 15<sup>th</sup> Street, N.W. Suite 700  
Washington, D.C. 20005

American Petroleum Institute \*  
Wayne V. Black  
Keller and Heckman LLP  
1001 G Street, N.W.  
Suite 500 West  
Washington, D. C. 20001

  
BRENNA NEWMAN

**\*via hand delivery**